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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Petitioner Arthur Stanley Jones seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Doc. 1. Magistrate Judge Jay R. Irwin filed a Report and Recommendation (“R&R”) that the motion and certificate of appealability be denied. Doc. 22. Petitioner objects to the R&R and does not request oral argument. Doc. 27. For the reasons that follow, the Court will accept the R&R and deny the motion.

The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by a magistrate judge in a habeas case. *See* 28 U.S.C. § 636(b)(1). The Court must undertake *de novo* review of those portions of the R&R to which specific objections are made. *See* § 636(b)(1)(c); Fed. R. Civ. P. 72(b); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

Petitioner does not object to the R&R's recitation of facts, and therefore the Court will adopt it summarily. Petitioner was convicted under Arizona law of 17 counts of sexual exploitation of a minor due to his possession of seventeen images of child pornography

1 downloaded from the internet. Doc. 22 at 2. Petitioner was sentenced to 408 years in prison
 2 – i.e., 17 consecutive sentences of 24 years each – on January 3, 2000. *Id.* Petitioner filed
 3 two petitions for post-conviction relief in State court to no avail. *Id.* One of his arguments
 4 was that the prosecution failed to prove the pictures were of actual children as opposed to
 5 computer-generated or “morphed” images. *Id.* The Arizona Court of Appeals rejected the
 6 argument, noting that the pictures themselves were sufficient evidence and that Petitioner’s
 7 trial counsel had stipulated that they depicted children. *Id.* at 2-3. On April 30, 2009,
 8 Petitioner filed for habeas relief. Doc. 1.

9 The R&R concluded that the habeas petition is time-barred under 28 U.S.C.
 10 § 2244(d)(1) and that neither statutory tolling nor equitable tolling would save the petition.
 11 Doc. 22 at 5, 8-16. The R&R did not reach the exhaustion and procedural default issues in
 12 the case, nor did the R&R address the substantive merits of Petitioner’s seven constitutional
 13 claims.¹ *Id.* at 4, 17. Petitioner makes several specific objections to the R&R: (1) the time
 14 at which his state conviction became final was incorrectly decided (Doc. 27 at 2-3); (2) he
 15 was delayed in discovering the factual predicate for his claims due to his status as an indigent
 16 *pro se* litigant, his lack of knowledge of the habeas statute of limitations, and the lack of a
 17 law library at his prison (*id.* at 4); (3) he is entitled to habeas relief due to a change in law
 18 that made the statute under which he was convicted unconstitutional (*id.* at 5-6); (4) he is
 19 entitled to statutory and equitable tolling because he was not aware of the one-year statute
 20 of limitations for habeas petitions, he is a *pro se* litigant, he was not given notice of timing
 21 requirements, and he exercised reasonable diligence upon learning of these requirements (*id.*
 22 at 17-23); and (5) his claim of actual innocence entitles him to a review on the merits (*see id.*
 23 at 23).

24 The Court has reviewed Petitioner’s arguments *de novo* in light of his specific
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26 ¹ Petitioner’s grounds for habeas relief are: (1) actual innocence and miscarriage of
 27 justice; (2) sufficiency of the evidence; (3) Brady violation and miscarriage of justice;
 28 (4) significant change in the law and unconstitutional conviction; (5) ineffective assistance
 of counsel; (6) prosecutorial misconduct and omission of jury instructions; and (7) illegal
 sentence. Doc. 22 at 4.

1 objections. The Court has independently reached the conclusion that Petitioner's arguments
2 lack merit for the same reasons as presented in the well-reasoned R&R. Therefore, the R&R
3 will be accepted.

The Court also notes a key theme running through Petitioner’s objection: namely that *State v. Hazlett*, 73 P.3d 1258 (Ariz. App. 2003), changed Arizona law in such a way that Petitioner would not have been convicted had *Hazlett* been applied in his case. See Doc. 27. This is an argument on the merits of habeas relief. To qualify for a review on the merits, however, Petitioner must first establish that his petition was timely. 28 U.S.C. § 2244(d). Having accepted the R&R above, this Court holds that Petitioner has failed to submit a timely petition for habeas relief and has not established that his untimeliness is excusable. Accordingly, the petition for habeas relief will be denied as untimely. Moreover, a certificate of appealability will be denied because Petitioner has not made a substantial showing that denying the petition as untimely under these facts would deny him a constitutional right. 28 U.S.C. § 2253(c)(2).

IT IS ORDERED:

- 16 1. The R&R (Doc. 22) is **accepted**.
17 2. The petition for writ of habeas corpus (Doc. 1) is **denied**.
18 3. A certificate of appealability is **denied**.

DATED this 2nd day of May, 2011.

Daniel G. Campbell

**David G. Campbell
United States District Judge**